

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



OAKLAND SCHOOL EMPLOYEES	)	
ASSOCIATION,	)	
	)	
Charging Party,	)	Case No. SF-CE-408
	)	
v.	)	Request for Reconsideration
	)	PERB Decision No. 275
OAKLAND UNIFIED SCHOOL DISTRICT,	)	
	)	PERB Decision No. 275b
Respondent.	)	May 24, 1984

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Appearances; Andrew Thomas Sinclair, Attorney for Oakland School Employees Association; Sharon D. Banks, Attorney for Oakland Unified School District.

Before Hesse, Chairperson; Jaeger, Morgenstern and Burt, Members.

DECISION

BURT, Member: The Public Employment Relations Board (PERB or Board) having duly considered the Oakland School Employees Association's (Association or OSEA) request for reconsideration, hereby grants that request in part, consistent with the discussion below.

PROCEDURAL HISTORY

On October 4, 1979, the Association filed charges in Case No. SF-CE-408, alleging, inter alia, that the Oakland Unified School District (District) had failed or refused to bargain in good faith regarding Association proposals for a four-hour workday for paraprofessional employees, personnel selection

criteria to fill vacant positions within the negotiating unit, and in-service training. Hearing was held on November 20, 1979.

On May 27, 1980, the Association filed charges in Case No. SF-CE-469, which were amended on July 8, 1980 to include an allegation that the District unilaterally implemented a standardization of hours policy for paraprofessional employees and refused to provide information about the policy. Hearing commenced on September 2, 1980.

On September 12, 1980, on the Association's motion, the hearing in SF-CE-408 was reopened to admit new evidence concerning the credibility of a District witness. In addition, by agreement of the parties, the ALJ took official notice of that portion of the record in Case No. SF-CE-469 relating to standardization of paraprofessional hours.

On December 29, 1982, the Board's decision issued in Case No. SF-CE-408, Oakland Unified School District, PERB Decision No. 275, dismissing all charges against the District. The Board reversed the administrative law judge's (ALJ) finding that the District had violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)<sup>1</sup> by failing or refusing to negotiate in good faith about a four-hour workday for paraprofessional positions and personnel

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<sup>1</sup>The EERA is codified at Government Code section 3540

selection criteria. Although the ALJ also found that the District had failed to negotiate in good faith about elements of the Association's in-service training policy, that finding was not excepted to, and the Board made no finding about that issue.

#### REQUEST FOR RECONSIDERATION

The Association requests reconsideration of the Board's decision in Oakland, supra, on the ground that the Board failed to consider material aspects of the record in SF-CE-469, pursuant to a stipulation of the parties. The Association also contends that the Board erred in its failure to consider portions of the ALJ's decision regarding in-service training. The District responds that the Association has not alleged "extraordinary circumstances" within the meaning of PERB's

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et seq. All statutory references herein are to the Government Code unless otherwise indicated.

Section 3543.5 provides that it shall be unlawful for a public school employer to:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
- (b) Deny to employee organizations rights guaranteed to them by this chapter.
- (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

regulation specifying the criteria for reconsideration<sup>2</sup> and, in addition, it contends that the Board did not err in the underlying Decision.

## DISCUSSION

### Standardization Policy

The ALJ found that the District's failure to inform OSEA of its existing standardization policy inhibited the effectiveness of negotiations between the parties during 1979 and was evidence of its failure to bargain in good faith. The Board disagreed, finding neither a deliberate withholding of relevant information from the Association nor a duty on the District's part to provide information in the absence of a request.

We have reviewed the record in SF-CE-469, and we find that there is nothing therein which contradicts or substantially adds to our findings in this case. Since we do not find that substantial, relevant evidence was overlooked in Case

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<sup>2</sup>PERB's regulations are codified at California Administrative Code, title 8, section 31001 et seq.

PERB rule 32410(a) provides that:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision . . . . The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

Nos. SF-CE-408 or SF-CE-469 which would compel us to reach a different result in this case, we conclude that no extraordinary circumstances exist which justify granting OSEA's request for reconsideration of the standardization policy issue.

#### In-Service Training

The Association also contends that the Board erred by failing to consider that portion of the ALJ's decision concerning in-service training in reaching its conclusion that the District had not failed to negotiate in good faith.

The ALJ found that a required minimum of in-service training was nonnegotiable because it was required by state and federal guidelines governing the funding for paraprofessionals. He found the rest of the proposal negotiable, however, and found that the District's refusal to negotiate about the subject was a violation of EERA subsections 3543.5 (a), (b) and (c).

The District did not except to this finding. The Board noted in a footnote in the underlying decision that this issue was not before it on exceptions. However, it did not then include the finding of violation in its order.

We find that this omission was an error and that that portion of the ALJ's decision and order should have been affirmed pro forma. We shall modify our Order accordingly.

#### ORDER

Upon the foregoing findings of fact and conclusions of law

and the entire record in this case, and pursuant to subsection 3541.5(c), it is found that the Oakland Unified School District has violated Government Code subsections 3543.5(a), (b) and (c).

It is hereby ORDERED that the Oakland Unified School District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

(1) Failing and refusing to meet and negotiate in good faith with the exclusive representative regarding in-service training (except for a required minimum amount).

(2) Interfering with employees because of their exercise of rights guaranteed by the Educational Employment Relations Act, including the right to select an exclusive representative to negotiate on their behalf; and

(3) Denying to the Oakland School Employees Association rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

(1) Upon request, meet and negotiate with the Oakland School Employees Association within thirty-five (35) days after issuance of this Decision regarding in-service training (except for a required minimum amount).

(2) Within thirty-five (35) days following the date of service of this Decision, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized

agent of the employer. Such posting shall be maintained for a period of 30 consecutive workdays. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, defaced, altered or covered by any material.

(3) Written notification of the actions taken to comply with this Order shall be made to the San Francisco Regional Director of the Public Employment Relations Board in accordance with her instructions.

Chairperson Hesse and Members Jaeger and Morgenstern joined in this Decision.

APPENDIX



NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD

After a hearing in unfair practice case No. SF-CE-408, in which all parties had the right to participate, it has been found that the Oakland Unified School District has violated subsections 3543.5(a), (b), and (c) of the Educational Employment Relations Act. As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the Oakland School Employees Association concerning in-service training (except for a required minimum amount).

2. Denying the Oakland School Employees Association the right to represent its members by failing and refusing to meet and negotiate in good faith.

3. Interfering with employees in the exercise of rights guaranteed to them by the Educational Employment Relations Act by failing and refusing to meet and negotiate in good faith.

B. TAKE THE FOLLOWING ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Upon request, meet and negotiate with the Oakland School Employees Association regarding in-service training (except for a required minimum amount).

Dated:

Oakland Unified School District

By \_\_\_\_\_  
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE DEFACED, ALTERED, REDUCED IN SIZE OR COVERED BY ANY OTHER MATERIAL.